No. 86-335

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

VS.

THE FIRST CHURCH OF CHRIST, SCIENTIST in Boston, Massachusetts, a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased, and RUTH L. TANNER,

Respondents.

On Petition For Writ Of Certiorari To The First District Appellate Court, State Of Illinois

BRIEF IN OPPOSITION FOR RESPONDENT, THE NORTHERN TRUST COMPANY

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
REASONS FOR DENYING THE WRIT:	
I.	
THE UNITED STATES SUPREME COURT SHOULD NOT INVOKE JURISDICTION TO REVIEW THE DECISION RENDERED BY THE ILLINOIS APPELLATE COURT ON ILLINOIS COMMON-LAW PRINCIPLES	2
II.	
THE DECISION OF THE ILLINOIS APPELLATE COURT DOES NOT CONFLICT WITH PRINCIPLES ESTABLISHED BY THE UNITED STATES SUPREME COURT	3
III.	
THE FIRST AMENDMENT PROTECTS THE RELIGIOUS ACTIVITIES OF JOHN BAUMGARTNER AND THE RESPONDENTS	6
CONCLUSION	9

TABLE OF AUTHORITIES

Cases	PAGE
Bergmann v. State, 486 N.E.2d 653 (Ind. App. 4 Dist. 1985)	4
Bob Jones University v. United States, 461 U.S. 574 (1983)	4
Brown v. First Church of Christ, Scientist, No. 73903 (Mich. App.)	4
Jacobson v. Massachusetts, 197 U.S. 11 (1905)	5
Rippberger v. Superior Court (People), appeal docketed, No. 24997 (Cal. March 27, 1986)	4
St. Elizabeth Hospital v. N.L.R.B., 715 F.2d 1193 (7th Cir. 1983)	4, 5
Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, 426 U.S. 696 (1976)	7
Super Tire Engineering Co. v. McCorkle, 550 F.2d 903 (3d Cir. 1977), *cert. denied*, 434 U.S. 827 (1977), *reh'g denied*, 434 U.S. 1025 (1978)	3
United States v. Ballard, 322 U.S. 78 (1944)	7, 8
Walker v. Superior Court (People), 222 Cal. Rptr. 87 (Cal. App. 3 Dist. 1986), *petition for review granted*, 224 Cal. Rptr. 340, 715 P.2d 260 (1986)	4
Wisconsin v. Yoder, 406 U.S. 205 (1972)	6, 7

Other Authorities	
Eddy, *Science and Health with Key to the Scriptures*, 10 (1971)	6

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On Petition For Writ Of Certiorari To The First District Appellate Court, State Of Illinois

BRIEF IN OPPOSITION FOR RESPONDENT, THE NORTHERN TRUST COMPANY

Respondent, The Northern Trust Company, as Executor of the Estate of Paul A. Erickson, Deceased, respectfully prays that the Petition for Writ of Certiorari to review the judgment and opinion of the First District Appellate Court of Illinois in this cause be denied.

REASONS FOR DENYING THE WRIT

I.

THE UNITED STATES SUPREME COURT SHOULD NOT INVOKE JURISDICTION TO REVIEW THE DECISION RENDERED BY THE ILLINOIS APPELLATE COURT ON ILLINOIS COMMON-LAW PRINCIPLES.

Petitioner claims to invoke this Court's jurisdiction under 28 U.S.C. §1257(3). In her five-count Fourth Amended Complaint, however, petitioner asserts her right to recover money damages for common-law negligence, medical malpractice, Christian Science malpractice, intentional misconduct and constructive trust. Petitioner has asserted her "right" to relief under these five common-law theories in her appeals in the Illinois courts and continues to assert this "right" in her Petition for Writ of Certiorari before this Court. Petitioner's assertions have not in the past and do not now present a federal question proper for review by this Court.

The Illinois trial court dismissed each of petitioner's five counts because each failed to state a cause of action under Illinois common-law principles. The medical malpractice count fell because petitioner failed to allege that the respondents held themselves out to decedent as medical doctors and failed to allege that decedent asked or expected respondents to render medical treatment. The Christian Science malpractice claim was defeated because it failed to present a justiciable controversy under Illinois law. Petitioner's ordinary negligence and intentional misconduct counts were dismissed because she failed to allege that decedent was incompetent. Finally, the count for constructive trust failed because petitioner did not set forth sufficient facts to show that Paul Erickson and Ruth

Tanner were acting as agents of the Church and further failed to show any underlying actionable misconduct by Erickson or Tanner.

It is well-settled that where a state court has decided the case upon a sufficient nonfederal ground, the United States Supreme Court will not take jurisdiction to review that decision for federal error. *E.g., Super Tire Engineering Co. v. McCorkle,* 550 F.2d 903 (3d Cir. 1977), *cert. denied,* 434 U.S. 827 (1977), *reh'g denied,* 434 U.S. 1025 (1978).

Since the Illinois Appellate Court decided this case on Illinois common-law principles, this respondent respectfully submits that the Supreme Court need not determine whether the state court properly acknowledged the parties' freedom to exercise their religion under the First Amendment of the United States Constitution.

II.

THE DECISION OF THE ILLINOIS APPELLATE COURT DOES NOT CONFLICT WITH PRINCIPLES ESTABLISHED BY THE UNITED STATES SUPREME COURT.

Petitioner's claim for money damages from the respondents failed because she did not allege facts sufficient to raise a valid cause of action under Illinois common-law principles. Now petitioner is claiming that dismissal of her Fourth Amended Complaint and its affirmation by the Illinois Appellate Court conflict with several decisions of the United States Supreme Court. This assertion must also fail for the simple reason that petitioner's Complaint never alleged the existence of a compelling state interest sufficient to warrant the courts' involvement in the Christian Science faith.

Religious conduct can be regulated or curtailed only where there is a paramount or compelling state interest. *Bob Jones University v. United States*, 461 U.S. 574 (1983). In *Bob Jones*, this Court determined that the government has a fundamental interest in eradicating racial discrimination which must take precedence over a school's claim to tax-exempt status as a religious institution.

Similarly, it has been settled that a state, as *parens patriae*, may order medical treatment to save the life of a child notwithstanding the parents' religious objections to the treatment. This concept pervades several cases recently decided by or currently pending in various state courts. *Walker v. Superior Court (People)*, 222 Cal. Rptr. 87 (Cal. App. 3 Dist. 1986), *petition for review granted*, 224 Cal. Rptr. 340, 715 P.2d 260 (1986); *Bergmann v. State*, 486 N.E.2d 653 (Ind. App. 4 Dist. 1985); *Rippberger v. Superior Court (People), appeal docketed*, No. 24997 (Cal. March 27, 1986); *Brown v. First Church of Christ, Scientist*, No. 73903 (Mich. App.).

However, this case in no way involves the issue of racial discrimination. Moreover, John Baumgartner was not a tender infant but a competent middle-aged adult, fully capable of consulting a physician had he so desired. No public policy similar to that in *Bob Jones* or the *parens patriae* cases is present in the case at bar, as the state has no compelling interest in regulating a competent adult's decision to exercise his chosen religion. Therefore, the cases cited by petitioner are totally inapposite.

Petitioner also relies upon *St. Elizabeth Hospital v. N.L.R.B.*, 715 F.2d 1193 (7th Cir. 1983). There the United States Court of Appeals for the Seventh Circuit determined that a religiously affiliated hospital was engaged primarily in the secular activity of providing health care

services to the general public, and, therefore, involvement of the N.L.R.B. in mediating collective bargaining questions did not violate the hospital's First Amendment rights. The court also recognized, however, that where the primary function of an institution is integrally related to its religious mission, the First Amendment precludes government interference. 715 F.2d at 1196. Petitioner's Complaint fails to allege facts which would remove John Baumgartner's relationship with his Christian Science practitioner, Paul Erickson, from their religious mission as members of the Christian Science faith. By petitioner's own rendition of the facts, it is evident that Paul Erickson had ministered to John Baumgartner for many years. It is further evident that John Baumgartner had voluntarily requested Christian Science ministry throughout his last illness. In meeting with his Christian Science practitioner, John Baumgartner was engaging in a very private and very personal religious experience. Clearly, there was no secular activity comparable to that encountered in *St. Elizabeth Hospital.*

Nor does the conduct of which petitioner complains fall within the principles enunciated in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). In *Jacobson*, this Court concluded that recognition of an individual's claim to exemption from small pox vaccination for religious reasons would have serious life-risking consequences for the general public. Under such circumstances, government intervention is justified. In contrast, John Baumgartner's decision to deal with his affliction through his Christian Science faith affected no one but himself. Petitioner has never claimed that John Baumgartner's decision and Paul Erickson's ministry had any consequences for the general public. Indeed, "[t]his case, of course, is not one in which any harm to the physical or mental health of [a] child or to the

public safety, peace, order or welfare has been demonstrated or may be properly inferred." *Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972).

III.

THE FIRST AMENDMENT PROTECTS THE RELIGIOUS ACTIVITIES OF JOHN BAUMGARTNER AND THE RESPONDENTS.

Petitioner phrases the question before this Court as follows: "whether the First Amendment protects religious faith healers and their Church from tort liability for causing the death of a patient through their wrongful treatment". Petitioner's Brief for Certiorari at 6. Presentation of the question in this manner makes two erroneous assumptions.

First, it presupposes that Christian Scientists fall into the generic category labeled "faith healers". This simply is not true since Christian Scientists do not believe that diligent prayer will necessarily or automatically cure their physical illnesses. When a Christian Scientist experiences illness or disease, he may contact a Christian Science practitioner. The practitioner will, upon request of the member of the faith, meet with that person and assist him in strengthening his spiritual oneness with God. The presence or absence of any healing process is not indicative of one's success or failure in attaining spiritual oneness with God. "That which we desire and for which we ask, it is not always best for us to receive. In this case infinite Love [*i.e.*, God] will not grant the request." Eddy, *Science and Health with Key to the Scriptures*, 10 (1971).

Second, petitioner's question suggests that a civil court has the authority and ability to determine what constitutes "wrongful" practice of the Christian Science faith.

The Illinois courts declined to become embroiled in the interpretation of religious beliefs, principles, canons and rules of the First Church of Christ, Scientist. Furthermore, the Illinois courts specifically found that the First Amendment negated their authority to make such an inquiry.

In *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976), this Court noted that it is the essence of religion that decisions of faith are reached and accepted even when they are not rational or measurable by objective criteria. 426 U.S. at 714-715. A person's way of life rooted in deep religious belief has the protection of the First Amendment. *Yoder*, 406 U.S. at 215. Petitioner's own well-pleaded facts demonstrate that John Baumgartner's interaction with Paul Erickson throughout his last illness was one deeply rooted in their religious beliefs. Recognition of petitioner's cause of action will not only infringe upon the freedom to exercise the Christian Science faith but will also destroy the faith itself.

In *Yoder*, this Court made it clear that religiously grounded conduct may fall within the protection of the Free Exercise Clause of the First Amendment. 406 U.S. at 219. There, this Court held that Wisconsin's interest in compulsory education did not warrant intrusion into the established religious practices of the Amish. Here, Illinois has no interest in recognizing a private cause of action in tort which will invade the beliefs of all Christian Scientists and compel them to modify the decisions by which they live their daily lives.

This Court's opinion in *United States v. Ballard*, 322 U.S. 78, 86-87 (1944) is particularly appropriate here:

"Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. . . . The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain."

CONCLUSION

For the reasons set forth herein, The Northern Trust Company, as Executor of the Estate of Paul A. Erickson, Deceased, respectfully requests that the Petition for Writ of Certiorari to review the judgment and opinion of the First District Appellate Court of Illinois be denied.

Respectfully submitted,

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